

**PART 81—SECRETARIAL ELECTIONS FOR TRIBES REORGANIZED
UNDER A FEDERAL STATUTE AND OTHER ORGANIZED TRIBES**

Subpart A – Purpose, Terms and Scope

- Sec.
81.1 What is the purpose of this part?
81.2 Are all Indian tribes subject to this Part?
81.3 Who may cast a vote in a Secretarial election?
81.4 What terms do I need to know?
81.6 Information Collection.
81.7 Is technical assistance available?

Subpart B – Charters of Incorporation

- 81.10 Do all charters of incorporation issued under Federal statute require Secretarial approval?
81.11 Who authorizes a Secretarial election to ratify or amend a charter of incorporation under Federal statute?

Subpart C – Secretarial Elections

- 81.12 Who may request a Secretarial election?
81.13 How is a Secretarial election requested?
81.14 When is a petition requesting a Secretarial election valid?
81.15 What action does the Local Bureau Official take?
81.16 When must the Authorizing Official act upon a request or petition for a

Subpart D – Secretarial Election Board

- 81.20 Who conducts the Secretarial election?
81.21 Is the recognized governing body of the Indian tribe required to appoint individuals to serve on the Secretarial Election Board?
81.22 What are the responsibilities of the Secretarial Election Board?
81.23 What are the responsibilities of the Secretarial Election Board Chairperson?
81.24 What are the responsibilities of District Secretarial Election Boards?

Subpart E – Secretarial Election Notice and Registration

- 81.25 What information is included in the Secretarial Election Notice and Registration Packet?
81.26 What information is on the Secretarial Election Notice?
81.27 What must the Secretarial election registration form contain?
81.28 How are registration forms submitted to the Secretarial Election Board?
81.29 What are the responsibilities of Secretarial Election Board with regard to voter registration?

- 81.30 What is the purpose of the Registered Voters List?
- 81.31 What information is contained in the Registered Voters List?
- 81.32 Where does the Secretarial Election Board post the Registered Voters List?
- 81.33 When must the Secretarial Election Board post the Registered Voters List?
- 81.34 How are errors in the Registered Voters List corrected?
- 81.35 Does the Secretarial Election Board respond to challenges?

Subpart F – Casting a Ballot in a Secretarial Election

- 81.36 Where does voting take place?
- 81.37 How are votes cast in a Secretarial election?

Subpart G – Voting by Absentee Ballot

- 81.40 Who may vote by absentee ballot in a Secretarial election?
- 81.41 How are eligible voters notified absentee ballots are available?
- 81.42 How are absentee ballots completed and returned?
- 81.43 When must an absentee ballot be received?

Subpart H – Voting at Polling Sites

- 81.45 How are polling sites and voting districts established?
- 81.46 Is electioneering allowed during a Secretarial election?
- 81.47 Are interpreters provided for a Secretarial election?
- 81.48 How are votes cast at a polling site?

Subpart I - Secretarial Election Ballots

- 81.50 How are ballots prepared?
- 81.51 How are absentee ballots prepared?
- 81.52 Are damaged ballots replaced?

Subpart J - Secretarial Election Results

- 81.55 When are ballots counted?
- 81.56 How does the Secretarial Election Board determine whether the required percentage of qualified voters cast ballots?
- 81.57 Are damaged or invalid ballots cast during the Secretarial election included in the election results?
- 81.58 Who certifies the results of the Secretarial election?
- 81.59 Where are the results of the Secretarial election posted?
- 81.60 How are the results of the Secretarial election challenged?
- 81.61 When are the results of the Secretarial election under the OIWA final for the Department?

81.62 When are the results of the Secretarial election under the IRA and ANRA final for the Department?

Subpart K - Secretarial Election Process - Timeline

81.63 What is the chronology of actions governed by this part?

Authority: 25 U.S.C. 473a, 476, 477, as amended, and 503.

Subpart A – Purpose, Terms and Scope

§ 81.1 What is the purpose of this part?

(a) This part prescribes the manner in which Secretarial elections are authorized for and conducted on behalf of Indian tribes with governing documents, laws or charters of incorporation requiring Secretarial approval or elections, and Indian tribes reorganized or seeking reorganization or a charter of incorporation under the Indian Reorganization Act, 25 U.S.C. 476, as amended, the Oklahoma Indian Welfare Act (OIWA), 25 U.S.C. 503, or the Alaska Native Reorganization Act, (ANRA), 25 U.S.C. 473a.

(b) This part applies:

(1) When an Indian tribe requests an election to reorganize under the IRA by adopting a proposed constitution, amending, or revoking an existing constitution and bylaws or ratifying and amending a charter of incorporation adopted under a Federal statute, whenever tribal law or an existing charter adopted under a Federal statute requires a vote by the members;

(2) To Indians tribes in Oklahoma organizing and adopting constitutions pursuant to the OIWA or the Secretary's general authority in Indian Affairs;

(3) To any Federally recognized Indian tribes in Alaska not recognized prior to May 1, 1936, that have a common bond of occupation, association, or residence within a

well-defined neighborhood, community, or rural district and organize to adopt a constitution and receive a charter of incorporation under the ANRA; and

(4) To Indian tribes adopting constitutions and bylaws under the IRA, OIWA, ANRA, or in instances where an Indian tribe's IRA, OIWA, or ANRA constitution requires Secretarial approval of an amendment, or when an Indian tribe amends its IRA, OIWA, or ANRA constitution with the intent to remove the requirement of Secretarial approval for future amendments.

(c) Where a discrepancy might appear to exist between this part and a specific requirement of the Federal statute governing the reorganization of an Indian tribe or ratification and amendment of charters of incorporation, these regulations must be interpreted to conform to the statute.

§ 81.2 Will the Secretarial Election follow the requirements of Indian tribe's constitution and laws?

(a) Secretarial elections are conducted as prescribed in this part unless the amendment article of the Indian tribe's constitution and bylaws or charter of incorporation provides otherwise, in which case the provisions of those documents rule where applicable.

(b) Deference will be given to the Indian tribe's reasonable interpretation of its own laws. However, the Secretary retains authority to interpret tribal law when:

(1) Necessary to carry out the government-to-government relationship with the tribe; or

(2) A provision, result, or interpretation is contrary to Federal law.

(c) Secretarial elections are not scheduled at the same time as tribal elections to avoid confusion resulting from differing requirements for tribal and Secretarial elections.

§ 81.3 Are all Indian tribes subject to this part?

(a) The following Indian tribes are not subject to this part:

(1) Tribes that have voted to exclude themselves from the provisions of the Indian Reorganization Act;

(2) Tribes that have amended their constitutions and by-laws or charters of incorporation to eliminate Secretarial approval; or

(3) Tribes that are otherwise precluded by law from reorganizing under Federal statute.

(b) This part applies to each Indian tribe that:

(1) Has governing documents, tribal law, or existing charter of incorporation requiring a Secretarial election;

(2) Reorganizes, adopts a proposed constitution, amends or revokes an existing constitution and bylaws, or ratifies or amends a charter of incorporation adopted under the IRA;

(3) Is in Oklahoma and proposes to adopt a proposed constitution, amends or revokes an existing constitution and bylaws, or ratifies or amends a charter of incorporation under the OIWA;

(4) Has a constitution adopted under the Secretary's general authority that requires a Secretarial election;

(5) Is in Alaska and proposes to organize or adopt, amend or revoke a constitution and bylaws, or ratifies or amends a charter of incorporation under the ANRA; or

(6) Proposes to revoke a constitution or bylaws adopted under Federal statute.

§ 81.4 Who may cast a vote in a Secretarial election?

(a) Any duly registered member of the Indian tribe that is reorganizing under Federal statute for the first time may cast a vote, regardless of residence.

(b) Any member who has registered and is qualified to vote, as defined by the Indian tribe's governing documents or charter, may cast a vote. If no requirements exist, a member who meets the same qualifications as those entitled to vote in the Secretarial election that effected the Indian tribe's reorganization (e.g. age, residence) may cast a vote.

§ 81.5 What terms do I need to know?

For purposes of this part:

Amendment means any modification, change, or revision to one or more provisions of an existing constitution adopted or charters of incorporation ratified before 1990 or under the OIWA.

Applicable law means any treaty, Executive Order, Act of Congress, or final decision of a Federal court which is applicable to the Indian tribe.

Appropriate Request means receipt in the Bureau office having administrative jurisdiction for the Indian tribe, of a valid petition or duly enacted resolution of the

recognized governing body of the Indian tribe, as well as the proposed document, tribal constitution and bylaws, amendment or revocation.

Authorizing Official means the Bureau official with delegated Federal authority to authorize a Secretarial election, generally the Regional Director or Director of the Bureau.

Bureau means the Bureau of Indian Affairs, Department of the Interior.

Cast ballot means an official ballot that is cast in the proper manner by a qualified voter. A qualified voter casts a vote by marking a paper ballot and placing it in an official ballot box or delivering an absentee ballot to the Secretarial Election Board; or entering a selection on a voting machine that is certified as accurate and tamper-proof by means acceptable to the Chairperson of the Secretarial Election Board.

Charter means a charter of incorporation ratified by qualified voters and issued, pursuant to a Federal statute, by the Authorizing Official to a federally recognized Indian tribe.

Constitution or Constitution and Bylaws means an Indian tribe's governing document(s), which prescribe the extent, limitations, and manner the government exercises its sovereign powers

Damaged ballot means an official ballot that has been torn, bent, or otherwise rendered unreadable so that it cannot be properly counted by the Secretarial Election Board. A true duplicate copy must be made of the damaged ballot in the presence of a member of the Secretarial Election Board and substituted for the damaged ballot; clearly labeled "duplicate" and given the same number recorded on the damaged ballot; and

counted in lieu of the damaged ballot. Both the damaged and duplicate ballot are retained.

Day means any day of the week, including Saturday, Sunday, and Federal holidays.

Director means the Director of the Bureau of Indian Affairs or authorized representative.

District Secretarial Election Board means the body of officials, designated by and reporting to the Secretarial Election Board, who administer the Secretarial election at the district level.

Electioneering means campaigning, for or against the adoption, revocation or amendment of a proposed document. Improper electioneering includes, but is not limited to, harassment or intimidation of voters or election officials.

Eligible voter means a tribal member who will be 18 years of age or older on the date of the Secretarial election and eligible to register to vote in a Secretarial election.

Eligible Voters List means a list of tribal members eligible to vote in a Secretarial election, which is compiled by an Indian tribe and certified by the tribe's governing body or the Bureau if it maintains the current membership list for the Indian tribe.

Federal statute means the Indian Reorganization Act (IRA) 25 U.S.C. 476, 477, as amended, the Oklahoma Indian Welfare Act (OIWA), 25 U.S.C. 503, or the Alaska Native Reorganization Act, (ANRA), 25 U.S.C. 473a.

Final request (as opposed to request for technical assistance) means the Indian tribe's response to the Authorizing Official's technical and legal comments, which may take the form of a petition or tribal resolution from the tribe's governing body, petition or

letter from the spokesperson for the petitioners, and the final text of the proposed constitution, amendment or revocation of a constitution, or proposed or amended charter of incorporation.

Indian means: (1) For purposes of this part, all persons who are members of those tribes listed in the FEDERAL REGISTER pursuant to 25 U.S.C. 479a—1(a), and, (2) any person not a member of one of the listed or eligible to be listed tribes who possesses at least one-half degree of Indian blood.

Indian tribe or tribe means: (1) Any Indian entity that has not voted to exclude itself from the Indian Reorganization Act and is included, or is eligible to be included, among those tribes, bands, pueblos, groups, communities, or Alaska Native entities listed in the FEDERAL REGISTER pursuant to 25 U.S.C. 479a—1(a) as recognized and receiving services from the Bureau of Indian Affairs; and (2) any group of Indians whose members each have at least one-half degree of Indian blood for whom a reservation is established and who each reside on that reservation. Such tribes may consist of any consolidation of one or more tribes or parts of tribes.

Invalid ballot means a cast ballot discovered at the time votes are counted, which does not comply with the requirements for voting or is not an official ballot. An invalid ballot is not counted when tallying votes cast or determining whether the required percentage of the qualified voters participated in the Secretarial election.

Local Bureau Official means the Superintendent, Field Representative, or other official having delegated federal administrative responsibility under this Part.

Local Bureau office means the local administrative office of the Bureau having responsibility for the Secretarial election.

Member means any Indian who meets the written criteria of and is duly enrolled with an Indian tribe. In the absence of written criteria, a member is a person recognized by the members of an Indian tribe as belonging to that tribe.

Must is used in place of shall and indicates a mandatory act or requirement.

Mutilated ballot means an official ballot that has been damaged to the extent that it is not possible to determine the choice the voter intended to make. There are two kinds of mutilated official ballots:

(1) A ballot that is mutilated and not cast. In this case, the mutilated ballot may be exchanged for a new one. If the need arises to exchange a mutilated absentee ballot, no additional time will be provided for the new ballot to be received by the Secretarial Election Board.

(2) A ballot that is mutilated and cast. A mutilated cast ballot is counted when tabulating the total votes cast and determining whether the required percentage of qualified voters participated in the Secretarial election.

Official ballot means the ballot prepared for use in a Secretarial election by the Secretarial Election Board and signed by the Secretarial Election Board Chairperson. An official ballot may be found to be damaged, spoiled or mutilated at the time cast votes are counted.

Proposed constitution or proposed constitution and bylaws means an Indian tribe's proposed governing document, which is submitted to the Secretary when the Indian tribe is reorganizing or organizing for the first time under a Federal Statute.

Qualified voter means a member of an Indian tribe who is duly registered to vote in a Secretarial election.

Recognized governing body means the Indian tribe's governing body recognized by the Bureau for the purposes of government-to-government relations.

Regional Director means the Bureau official having administrative responsibility for the Bureau's relationship with the Indian tribes in its designated region.

Registered voter means an eligible voter who has registered to vote in the Secretarial election and whose name appears in the Registered Voters List.

Registered Voters List means the list of all eligible tribal members who have registered to vote in the Secretarial election.

Registration means the process by which an eligible voter is determined qualified to vote in the Secretarial election, including completion and timely receipt of a registration form by the Secretarial Election Board and inclusion in the Registered Voters List.

Reorganized tribe means a tribe whose members have adopted a constitution pursuant to a Federal statute.

Reservation means an area of land reserved by treaty; set aside by statute, Executive Order or Secretarial proclamation; or otherwise set aside for the benefit, use and occupancy of an Indian tribe.

Revocation means the decision of the majority of qualified voters to repeal in its entirety (as opposed to amending or revising) an existing constitution by means of a Secretarial election.

Secretarial election (as compared to a tribal election that is conducted by the tribe under exclusive tribal authority) means an election conducted under this Part and

pursuant to a Federal statute or tribal constitution (see *Cheyenne River Sioux Tribe v. Andrus*, 566 F. 2d 1085 (8th Cir. 1977), cert. denied 439 U.S. 820 (1978)).

Secretarial Election Board means the body of officials appointed to administer the Secretarial election.

Secretary means the Secretary of the Interior or authorized representative exercising authority delegated by the Secretary.

Spoiled ballot means an official ballot that has been marked in such a way that it is not possible to determine the intent of the voter, a ballot that has not been marked at all, or one that has been marked so as to violate the secrecy of the ballot. There are two kinds of spoiled official ballots:

(1) A ballot that is spoiled but not cast. In this case, the spoiled ballot may be exchanged for a new ballot. If the need arises to exchange a spoiled absentee ballot, no additional time will be provided for the new ballot to be received by the Secretarial Election Board.

(2) A ballot that is spoiled and cast. A spoiled cast ballot is counted when tabulating the total votes cast and determining whether the required percentage of qualified voters participated in the Secretarial election.

Spokesperson for the petitioners means an eligible voter of the Indian tribe who initiates a petition or who is designated by tribal members who are eligible voters to speak on their behalf.

Tribal government see recognized governing body.

Voting district means the geographic area(s) established in the Indian tribe's constitution or governing documents or designated by the Secretarial Election Board when the tribe's constitution does not establish voting districts.

§ 81.6 Information Collection.

The information collection requirement contained in this part will be approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), and assigned clearance number _____. This information is collected when, pursuant to Federal statute or the Indian tribe's governing documents, the Indian tribe or a spokesperson for the petitioners requests a Secretarial election to reorganize or organize; adopt, amend, or revoke governing documents; or adopt or amend charters of incorporation.

§ 81.7 Is technical assistance available?

Yes. Local Bureau personnel provide technical assistance to tribal governments in the drafting of constitutions, bylaws, charters of incorporation, amendments and revocations, as well as the Secretarial election process.

Subpart B – Charters of Incorporation

§ 81.8 Do charters of incorporation issued under Federal statute require Secretarial approval?

Yes. Secretarial approval is required when a charter of incorporation is issued under Federal statute.

§ 81.9 Who authorizes a Secretarial election to ratify, amend, or surrender a charter of incorporation issued under Federal statute?

Within 45 days of receipt of the final request and eligible voters list, the Authorizing Official must --

- (a) Issue the charter of incorporation; and
- (b) Authorize and direct the Local Bureau Official to call a Secretarial election to ratify the charter of incorporation or amendment; or,
- (c) Advise or assist the Indian tribe requesting revocation of a charter of incorporation issued under Federal statute.

§ 81.10 When does a charter of incorporation issued under a Federal statute become operative?

The charter of incorporation becomes operative after:

- (a) It is ratified by the tribe's governing body for those charters of incorporation issued after May 24, 1990, or
- (b) When a tribe amends a charter of incorporation ratified before May 24, 1990, or a charter of incorporation issued under the OIWA, the amended charter becomes operative when ratified by the qualified voters in an election called and conducted by the Secretary in accordance with the terms of the charter and these regulations.

§ 81.11 Who has the authority to revoke a charter of incorporation issued under Federal statute?

Only the United States Congress may revoke a charter of incorporation issued under Federal statute to an Indian tribe.

Subpart C – Secretarial Elections

§ 81.12 Who may request a Secretarial election?

As required in this Part and 25 CFR Part 82, the recognized governing body of an Indian tribe or the spokesperson for the petitioners may request a Secretarial election, unless the tribe has affirmatively voted to exclude itself from the IRA.

§ 81.13 How is a Secretarial election requested?

The recognized governing body of an Indian tribe or the spokesperson for the petitioners must submit an appropriate request to the local Bureau office. An appropriate request includes:

- (a) The proposed document or proposed amendment; and
- (b) Resolution of the recognized governing body or valid petition requesting a Secretarial election.

§ 81.14 When is a petition requesting a Secretarial election valid?

A petition is valid when it meets the requirements of this Part and the Indian tribe's existing constitution, charter of incorporation, or 25 CFR Part 82--Subpart B.

§ 81.15 What action does the Local Bureau Official take?

(a) The Local Bureau Official reviews the appropriate request and all accompanying documents and responds to the recognized governing body of the Indian tribe or spokesperson for the petitioners with recommendations for technical and legal changes.

(b) Within 15 days (30 days in Alaska) of receipt of the final request of the recognized governing body of the Indian tribe or spokesperson for the petitioners, the Local Bureau Official must --

(1) Inform the recognized governing body of the Indian tribe or spokesperson for the petitioners of any provisions(s) that may be contrary to Federal law;

(2) Confirm the final request meets the requirements of this Part, the Indian tribe's existing constitution and bylaws or charter of incorporation; and

(3) Transmit the final request to the Authorizing Official.

(c) When directed by the Authorizing Official to call a Secretarial election, the Local Bureau Official must, at least 30 days before calling the Secretarial election, advise the recognized governing body of the Indian tribe or spokesperson for the petitioners of any provision(s) that may be contrary to Federal law.

§ 81.16 When must the Authorizing Official act upon a request or petition for a Secretarial Election?

(a) The Authorizing Official must authorize and direct the Local Bureau Official to call and hold a Secretarial election to adopt a constitution and bylaws, to revoke a constitution and bylaws, or ratify a charter of incorporation or amendment upon the

request of the governing body of the Indian tribe or petition signed by a majority of the Indian tribe's adult members or as prescribed by the tribe's constitution.

(b) The Authorizing Official must authorize and direct the Local Bureau Official to call and hold a Secretarial election and provide written notice of the authorization to the recognized governing body of the Indian tribe and spokesperson for the petitioner within 90 days (120 days in Alaska) of receipt of:

(1) The final request of the spokesperson for the petitioner, which accepts or rejects the Local Bureau Official's recommendations and includes all accompanying documents;

(2) The request of the recognized governing body of the Indian tribe for an election to ratify an amendment to its constitution, bylaws or charter of incorporation pursuant to the amendment article, unless the tribe's constitution states otherwise; or,

(3) The request of the recognized governing body of the Indian tribe to bypass the amendment provision of its constitution, bylaws, or charter of incorporation because it is too outdated to allow amendment.

(b) The Authorizing Official must authorize and direct the Local Bureau Official to call and hold a Secretarial election and provide written notice of the authorization to the recognized governing body of the Indian tribe or spokesperson for the petitioner within 180 days of receipt of:

(1) The request of the recognized governing body of the Indian tribe for an election to ratify a proposed constitution or revoke a constitution or bylaws; or,

(2) The receipt of a petition to ratify a proposed constitution and bylaws or revoke a constitution and bylaws that is validated by the Local Bureau Official, as required by 25 CFR Part 82.15.

(c) Any authorization not acted upon within 90 days is considered void. An extension of the authorization may be granted by the Authorizing Official upon a valid and reasonable request from the Secretarial Election Board.

Subpart D – Secretarial Election Board

§ 81.20 Who conducts the Secretarial election?

The Secretarial election is conducted by a Secretarial Election Board, comprised of the Local Bureau Official or designated representative, acting as Chairperson, and at least two representatives appointed by the recognized governing body of the Indian tribe.

(a) The recognized governing body of the Indian tribe may use tribal funds to compensate non-Federal personnel who assist in conducting the Secretarial election.

(b) The Indian tribe may not compensate Federal personnel who conduct the Secretarial election.

§ 81.21 Is the recognized governing body of the Indian tribe required to appoint individuals to serve on the Secretarial Election Board?

No. The Chairperson of the Secretarial Election Board may appoint eligible voters to serve as members of the Secretarial Election Board, if--

(a) The recognized governing body of the Indian tribe does not appoint at least two board members within 10 days after receiving notice the Secretarial election has been authorized.

(b) The members selected by the recognized governing body of the Indian tribe are unwilling or unable to serve and replacements are not named.

(c) The Indian tribe does not have a recognized governing body.

§ 81.22 What are the responsibilities of the Secretarial Election Board?

Upon notice the Secretarial election is authorized, the Secretarial Election Board must--

(a) Set the date for the Secretarial election in consultation with the recognized governing body.

(b) Prepare the Secretarial Election Notice and Registration Packet at least 30 days and not more than 60 days before the date of the Secretarial election. The packet must notify eligible voters, who will be 18 years of age or older on the date of the Secretarial election, they must register if they intend to vote.

(c) Establish voting districts and designate a polling place for each district where necessary if not established by the tribe's constitution, election ordinance, or resolution of the recognized governing body.

(d) Appoint a District Secretarial Election Board for each voting district.

(e) Obtain a list of eligible voters, certified by the Indian tribe's recognized governing body.

(f) Send a Secretarial Election Notice and Registration Packet, with the proposed document or a summary of the proposed document, to each eligible voter's address as it appears on the Eligible Voters List.

(g) Post the Secretarial Election Notice, the full text of any proposed document, constitution and bylaws, constitutional amendment(s), charter of incorporation, or charter amendment(s) at the local Bureau office, the tribal headquarters, and other public places determined by the Secretarial Election Board.

(h) Receive voter registration forms.

(i) Post the Registered Voters List at least 20 days before the date of the Secretarial election.

(j) Determine all challenges to the Registered Voters List no later than 10 days before the date of the Secretarial election.

(k) If necessary, post the corrected Registered Voters List.

(l) Verify that the name of each person requesting an absentee ballot is on the Registered Voters List.

(m) Mail absentee ballots to registered absentee voters and place a check mark next to the appropriate name to indicate the ballot was mailed.

(o) On the day of the Secretarial election--

(1) Monitor the election process.

(2) Verify the name of each person requesting a ballot is on the Registered Voters List and place a check mark next to the appropriate name to indicate the ballot was received.

(3) Keep ballots in marked and locked boxes at all times, except when ballots are counted.

(4) Count all regularly cast ballots immediately after the polls close, and then count absentee ballots.

(5) Post and certify the results of the Secretarial election.

(6) Deliver the cast ballots, in marked and locked boxes, all unused ballots, the Registered Voters List, and all voting materials to the Secretarial Election Board Chairperson.

(p) Compile the Secretarial Election results of the entire reservation.

§ 81.23 What are the responsibilities of the Secretarial Election Board

Chairperson?

In addition to the responsibilities listed in § 81.22, the Secretarial Election Board Chairperson must--

(a) Appoint interpreters, when requested.

(b) Appoint polling place workers, as needed.

(c) Retain as official records for at least one year following the conclusion of the Secretarial election--

(1) The names and addresses of persons to whom Secretarial Election notices were mailed and confirmation of the date of mailing;

(2) A copy of each registration request and confirmation of the method and date of receipt;

- (3) The official List of Registered Voters and the copies used at all polling places; and
- (4) The original of all cast, damaged, mutilated, spoiled, and unused ballots.
- (d) At the close of the retention period and in accordance with the Federal Records Schedule, submit all materials related to the Secretarial Election to the Federal Records Center.

§ 81.24 What are the responsibilities of District Secretarial Election Boards?

District Secretarial Election Boards must---

- (a) Perform all the responsibilities in § 81.22 (o); and
- (b) Certify the District Secretarial Election results on forms provided by the Secretarial Election Board.

Subpart E – Secretarial Election Notice and Registration

§ 81.25 What information is included in the Secretarial Election Notice and Registration Packet?

The Secretarial Election Notice and Registration Packet must contain--

- (a) Secretarial Election Notice;
- (b) Registration form;
- (c) Request for an absentee ballot, unless the Secretarial election is conducted totally by absentee voting, in which case, every registered voter will automatically receive an absentee ballot; and

- (d) A copy of the original language and proposed document to be voted upon.

§ 81.26 What information is on the Secretarial Election Notice?

The Secretarial Election Notice must clearly state--

- (a) The date of the Secretarial election;
- (b) The purpose of the Secretarial election;
- (c) The statutory and tribal authority under which the Secretarial election is held;
- (d) Whether the Secretarial election was requested by tribal resolution or petition;
- (e) That tribal members must register to be eligible to vote in the Secretarial election;
- (f) How tribal members register to vote;
- (g) How tribal members request an absentee ballot;
- (h) The deadline for registration;
- (i) The hours polling places will be open;
- (j) The location of established polling places; and
- (k) When and where the Secretarial election results will be posted.

§ 81.27 What must the Secretarial election registration form contain?

The registration form must--

- (a) Advise eligible voters they must register in order to vote in the Secretarial election;
- (b) Obtain the name and current address of eligible voters;

- (c) Confirm registered voters are tribal members who will be 18 years of age or older on the day of the Secretarial election;
- (d) Inform eligible voters that completion of the form is voluntary but their signatures are required in order to vote in the Secretarial election;
- (e) Identify the location of established voting districts or optional polling places;
- (f) Instruct eligible voters to request for an absentee ballot, unless the Secretarial election is conducted totally by absentee voting;
- (g) State the date by which registration forms must be received; and
- (h) Inform eligible voters the information provided to the Secretarial Election Board will be used to determine whether the registrant's name may be placed on the Registered Voters List in order to receive a ballot.

§ 81.28 How are registration forms submitted to the Secretarial Election Board?

- (a) Registration forms may be mailed or delivered by hand to the Secretarial Election Board, or its designee, and must be received on or before the deadline date contained in the Secretarial Election Notice.
- (b) Registration forms received by facsimile will not be accepted by the Secretarial Election Board, unless otherwise noted in the Secretarial Election Notice.

§ 81.29 What are the responsibilities of Secretarial Election Board with regard to voter registration?

- (a) The Secretarial Election Board must--
 - (1) Record the name and address of each registrant;

(2) Verify each registrant is an eligible voter; and

(3) Confirm the registration form was received on or before the deadline date contained in the Secretarial election notice.

(b) If the registrant is an eligible voter and the registration form was received on or before the deadline date, the Secretarial Election Board must place the name of the eligible voter on the Registered Voters List.

(c) If the registrant is not an eligible voter or the registration form was received after the deadline date, the Secretarial Election Board must exclude the individual from the Registered Voters List.

§ 81.30 What is the purpose of the Registered Voters List?

The Registered Voters List is the list of eligible voters who have registered and may cast a ballot in the Secretarial election. Individuals whose names do not appear on the Registered Voters List will not be permitted to cast a ballot.

§ 81.31 What information is contained in the Registered Voters List?

The Registered Voters List must--

(a) Contain the names, in alphabetical order, of all registered voters;

(b) If voting districts are designated, contain the names, in alphabetical order, of registered voters by voting district;

(c) Identify which registered voters requested an absentee ballot; and

(d) State the Secretarial Election Board will determine all challenges to the registered voters list no later than 10 days before the date of the Secretarial election

(e) State written challenges to the accuracy of the Registered Voters List must be received by the Secretarial Election Board at least 10 days before the day of the Secretarial election.

§ 81.32 Where does the Secretarial Election Board post the Registered Voters List and voting sites?

The Secretarial Election Board must post a copy of the Registered Voters List and voting sites at the local Bureau office, the tribal headquarters, and other public places designated by the Secretarial Election Board.

§ 81.33 When must the Secretarial Election Board post the Registered Voters List?

The Secretarial Election Board must post a copy of the Registered Voters List at least 20 days before the Secretarial election. The date the list is posted and the date of the Secretarial election are not included in the computation of 20 days notice.

§ 81.34 How are errors in the Registered Voters List corrected?

Any eligible voter may challenge the accuracy of the Registered Voters List. Only written challenges received by the Secretarial Election Board at least 10 days before the day of the Secretarial election will be considered. The challenge must--

(a) State the name of the eligible voter and that the name does or does not appear on the Registered Voters List; and

(b) State the reason(s) why the eligible voter should or should not be registered.

§ 81.35 Does the Secretarial Election Board respond to challenges?

Yes. The Secretarial Election Board must--

(a) Rule on each challenge at least ten (10) days before the Secretarial election;

(b) Disallow a challenge, if--

(1) The challenge was received less than ten days before the date of the

Secretarial election, or

(2) The voter registration form was received after the deadline date for voter

registration;

(c) Correct the Registered Voters List to--

(1) Include the name of any individual whose name appears on the Eligible

Voters List approved by the recognized tribal governing body and whose registration was received before the deadline date for voter registration; and

(2) Remove the name of any individual who is not tribal member or does not meet the age or residency requirement to cast a vote in the Secretarial election.

(d) Post a corrected Registered Voters List at the sites listed in § 81.45; and

(e) Provide a copy of the corrected Registered Voters List to each designated polling place.

Subpart F – Casting a Ballot in a Secretarial Election

§ 81.36 Where does voting take place?

Voting is conducted at designated polling places or by absentee ballot.

§ 81.37 How are votes cast in a Secretarial election?

Voting may be by paper ballot or such other method that provides for voting in secrecy and is prescribed by the tribe's laws or established by the Secretarial Election Board.

Subpart G – Voting by Absentee Ballot

§ 81.40 Who may vote by absentee ballot in a Secretarial election?

(a) The first time an Indian tribe adopts a constitution or charter of incorporation under the IRA, OIWA or ANRA, all registered voters may vote by absentee ballot, regardless of their residence.

(b) In a Secretarial election to amend the constitution or charter of incorporation, absentee voting is allowed if the eligible voter--

(1) Requests an absentee ballot; and

(2) Meets the requirements for absentee voting established by the tribe's constitution.

(c) The Secretarial Election Board may choose not to use polling places and provide for the issuance and receipt of ballots entirely through the United States Postal Service.

§ 81.41 How are eligible voters notified absentee ballots are available?

If the Secretarial election is not conducted completely by absentee ballot, an absentee ballot request form must be included in the Secretarial Election Notice and

Registration Packet. To receive an absentee ballot, an eligible voter must complete and submit the absentee ballot request on or before the date established as a deadline for receipt of absentee ballots.

§ 81.42 How are absentee ballots completed and returned?

Registered voters must complete and return the absentee ballot by--

- (a) Marking the ballot, folding it to conceal the markings, and placing it in an inner envelope marked "Absentee Ballot";
- (b) Sealing the inner envelope marked "Absentee Ballot" and placing it in the pre-addressed outer envelope;
- (c) Sealing the pre-addressed outer envelope, signing the envelope, and completing the certificate on the back of the envelope;
- (d) Mailing the pre-addressed outer envelope through the U.S. Postal Service.

§ 81.43 When must an absentee ballot be received?

- (a) Absentee ballots must be received by the deadline established by the Secretarial Election Board.
- (b) Absentee ballots cannot be counted if received by the Secretarial Election Board later than a deadline established by the Secretarial Election Board.
- (c) Absentee ballots must be mailed at least ten (10) days before the deadline to return the ballots to the Secretarial Election Board --
 - (1) Unless the request for an absentee ballot is received less than 10 days before the deadline to return the ballot to the Secretarial Election Board;

(2) Unless the registered voter asked to exchange a damaged absentee ballot less than 10 days before the deadline to return the ballot to the Secretarial Election Board; or

(3) Unless the voter is notified, less than 10 days before the deadline for returning the ballot to the Secretarial Election Board, he successfully challenged his omission from the posted Registered Voters List; and,

(4) Absentee ballots must be received by the Secretarial Election Board not later than the close of the polls or as otherwise directed by the Secretarial Election Board.

Subpart H – Voting at Polling Sites

§ 81.45 How are polling sites and voting districts established?

(a) The Secretarial Election Board must designate---

(1) Voting district(s) as established by the Indian tribe's constitution, election ordinance or resolution;

(2) Designate one polling site for each voting district; and

(3) Establish a District Secretarial Election Board for each voting district, if required by the tribe's constitution, election ordinance or resolution.

(b) The Secretarial Election Board may, in the absence of a provision in the tribe's constitution, election ordinance or resolution establish polling sites and designate voting districts within the boundaries of the reservation, if the tribe has a reservation.

§ 81.46 Is electioneering allowed during a Secretarial election?

Electioneering is permitted, but cannot take place within 50 feet of the entrance to a polling site. Sample ballots are permitted in the voting booth. Improper electioneering prior to and during a Secretarial election is prohibited.

§ 81.47 Are interpreters provided for a Secretarial election?

Yes. Upon the request of a registered voter, and as needed to assist registered voters, an interpreter must be provided. At the request of a registered voter, the interpreter may accompany the voter into the voting booth. The interpreter may explain the process and voting instructions, but must not influence the voter in casting the ballot.

§ 81.48 How are votes cast at a polling site?

To cast a ballot, a registered voter must--

- (a) Arrive at the appropriate polling place within the prescribed voting hours;
- (b) Identify himself to the Secretarial election officials by name and address;
- (c) Provide appropriate identification;
- (d) Sign or make his mark on the List of Registered Voters;
- (e) Vote by secret ballot, using the method established by the Secretarial Election

Board;

(f) Mark the ballot appropriately and place it in the ballot box or enter his selection(s) in a voting machine that has been certified accurate and tamper-proof by means acceptable to the Secretarial Election Board.

Subpart I - Secretarial Election Ballots

§ 81.50 How are ballots prepared?

(a) The Secretarial Election Board must inform voters in clear, simple language that a vote in a Secretarial election is either for or against the proposal. For example: Tribe A proposes an amendment to reduce the Indian blood required for membership from one-half to one-fourth. Voters must choose *one* alternative by marking "yes" or "no" on the ballot. In this case, a "no" vote would keep the one-half requirement; a "yes" vote would change the requirement to the one-fourth.

(b) The Secretarial Election Board must--

(1) Ensure each proposal is clear and understandable;

(2) Avoid contradictions by listing all sections of the tribe's governing documents that would be impacted by the proposal;

(3) Designate multiple proposals by letter, not a number (for example, the first proposed amendment will be "Proposed Amendment A," the second "Proposed Amendment B," and so on);

(4) Confirm the Secretarial Election Board Chairperson has approved the ballot's form and content before reproducing it; and

(5) Stamp, in red or blue ink, the face of each paper ballot with--

OFFICIAL BALLOT
(Facsimile Signature)
CHAIRPERSON, SECRETARIAL ELECTION BOARD

§ 81.51 How are absentee ballots prepared?

The requirements found in § 81.50 also apply to absentee ballots. In addition, the Secretarial Election Board must provide each absentee voter with an absentee ballot package containing--

- (a) An absentee ballot;
- (b) Instructions for completing the absentee ballot;
- (c) An inner envelope with the words "Absentee Ballot" printed on the outside;
- (d) A copy of the proposed document or amendment, if the full text is not printed on the ballot; and
- (e) A pre-addressed outer envelope with the following certification printed on the back:

I, (print name of voter), hereby certify I am a registered voter of the (name of Indian Tribe); I will be 18 years of age or older on the day of the Secretarial election; I am entitled to vote in the Secretarial election to be held on (date of Secretarial election). I further certify that I marked the enclosed ballot in secret.
Signed: _____ (voter's signature).

§ 81.52 Are damaged ballots replaced?

Damaged ballots may be replaced only if the ballot was not cast. However, the Secretarial Election Board cannot extend the deadline date to cast the absentee ballot.

- (a) If the damaged ballot was cast, the Secretarial Election Board
 - (1) Cannot issue another ballot; and
 - (2) Must count the damaged ballot as part of the total number of votes cast in the Secretarial election.
- (b) If the voter is at a polling place and the damaged ballot has not yet been cast—

(1) The registered voter must return the damaged ballot to the Secretarial Election Board.

(2) The Secretarial Election Board member will mark "Invalid" on the damaged ballot, record that the ballot has been invalidated and furnish the voter with a new ballot.

(c) If an absentee ballot is damaged--

(1) The registered voter must return the damaged ballot and request, in writing or in person, another absentee ballot from the Secretarial Election Board; and

(2) If the request is received before the deadline established by the Secretarial Election Board, the Secretarial Election Board must promptly provide another absentee ballot and note the dates of all related actions.

Subpart J - Secretarial Election Results

§ 81.55 When are ballots counted?

The Secretarial Election Board must start counting ballots immediately after the polls close. All duly cast ballots, including spoiled ballots, must be counted as cast, even if the intent of the voter cannot be determined.

§ 81.56 How does the Secretarial Election Board determine whether the required percentage of qualified voters cast ballots?

(a) The Secretarial Election Board must count the number of cast ballots. The total is used to determine whether the percentage of qualified voters who cast a ballot meets the requirements of the tribe's governing documents or Federal statute.

(b) Spoiled ballots cast by registered voters are included in the calculation to

determine whether the required percentage of voters cast a ballot.

(c) Damaged and invalid ballots are retained, but not included in the calculation to determine whether the required percentage of voters cast a ballot.

§ 81.57 Are damaged or invalid ballots cast during the Secretarial election included in the election results?

No. Damaged and invalid ballots cast in a Secretarial election are not included in the Secretarial Election Board's tally to determine if a majority of those voting approved or disapproved a Secretarial election proposal.

§ 81.58 Who certifies the results of the Secretarial election?

The Secretarial Election Board must certify the results of the Secretarial election.

(a) The Chairperson of the Secretarial Election Board must transmit to the Authorizing Official a signed Certificate of Election Results and--

(1) The original text of the material voted on;

(2) A copy of the Registers Voters List, Secretarial Election Notice, Registration Packet, and ballot;

(3) Any challenges to the Secretarial election results; and

(4) A report on the conduct of the Secretarial election.

(b) The Certificate of Secretarial Election Result must:

(1) Be signed by the Chairperson and all members of the Secretarial Election Board present during the counting of ballots; and

(2) Contain the following statement:

Certificate of Results of Secretarial Election

Pursuant to a Secretarial election authorized by (name and title of authorizing official) on (date), the attached [insert: Constitution and Bylaws, charter of incorporation, amendment or revocation] of the (official name of Indian tribe) was submitted to the qualified voters of the tribe and on (date) duly (insert: adopted, (rejected or revoked)) by a vote of (number) for and (number) against and (number) cast ballots found spoiled or mutilated in an election in which at least 30 percent (or such "percentages" as may be required to amend according the constitution) of the (number) members entitled to vote, cast their ballot in accordance with (appropriate Federal statute).

Signed: _____ (by the Chairperson of the Secretarial Election Board and Board Members)

Date: _____

§ 81.59 Where are the results of the Secretarial election posted?

After tabulating the votes, the Secretarial Election Board must post the results of the Secretarial election at the local Bureau office, the tribal headquarters, and at other public places listed in the Secretarial Election Notice.

§ 81.60 How are the results of the Secretarial election challenged?

Any registered voter may challenge the results of the Secretarial election. The written challenge, with substantiating evidence, must be received by the Local Bureau Official within three (3) days after the Secretarial Election Results are posted.

§ 81.61 When are the results of the Secretarial election under the OIWA final for the Department?

Under the OWA, the Chairperson of the Secretarial Election Board must certify 30% of those entitled to vote cast a ballot and post the results of the election.

(a) The results become final for the Department three (3) days after posting if no challenges are received by the Chairperson of the Secretarial Election Board.

(b) If challenges are received, the Authorizing Official must determine all challenges within 45 days of the date of the election, at which time the results are final for the Department.

(c) If the Authorizing Official fails to act within 45 days, the results of the Secretarial election as certified by the Secretarial Election Board Chairperson are final.

§ 81.62 When are the results of the Secretarial election under the IRA and ANRA final for the Department?

Once the results of a Secretarial election under the IRA or ANRA have been certified by the Secretarial Election Board, the Authorizing Official has forty-five (45) days from the date of the election to review the process, results, and all challenges to the Secretarial election.

(a) If a challenge is sustained, the Authorizing Official must disapprove the election results and authorize a recount or a new Secretarial election.

(b) If all challenges are not sustained, the Authorizing Official must verify:

(1) The election materials were reviewed by the Local Bureau Official to ensure that the Secretarial election was conducted in a proper and fair manner;

(2) The minimum number of voters required by the amending article of the constitution or charter or, at least, thirty percent (30%) of those entitled to vote cast a ballot;

(3) The voters rejected or accepted the proposal;

(4) The election results are approved; and

(5) The proposal is approved or disapproved.

(c) The Authorizing Official must notify, in writing, the Chairperson of the Secretarial Election Board, the recognized governing body of the Indian tribe, the Director of Bureau, and the spokesperson for the petitioners, when appropriate:

(1) The determination of all challenges;

(2) Whether the proposed constitution, bylaws, amendment(s), revocation, or charter has been adopted or rejected by the voters; and

(3) Whether the proposal is contrary to Federal law; or

(4) If adopted, the constitution, amendment(s) or charter is approved; and,

(5) The results are final for the Department.

(e) The Authorizing Official must --

(1) Forward the original text of the document(s), original Certificate of Approval or Disapproval, and copy of the Certificate of Results of Election to the Indian tribe and provide a copy to the Director of the Bureau; and

(2) Retain, as required by the Schedule of Records, a copy of all document(s) voted upon, the completed Certificate of Results of Election, copy of the Certificate of Approval or Disapproval, the Registered Voters List, the Secretarial Election Notice and Registration Packet, and all original ballots.

(f) If the Authorizing Official fails to act within 45 days of the date of the election, the result of the Secretarial election as certified by the Secretarial Election Board Chairperson is final for the Department.

Subpart K - Secretarial Election Process

§ 81.63 What is the chronology of actions governed by this part?

The actions governed by this part occur in accordance with the following timeline:

	Timeline	Section
RECOGNIZED GOVERNING BODY or SPOKESPERSON for the petitioners requests a Secretarial election by submitting an appropriate request to the Local Bureau Office.	none	81.13
LOCAL BUREAU OFFICIAL reviews the documents, issues technical comments, and advises recognized governing body of the Indian tribe if any section of document is contrary to Federal statute.		81.15
RECOGNIZED GOVERNING BODY or SPOKESPERSON for the petitioner accepts or rejects Bureau comments and submits to Authorizing Official the <u>final</u> request and document(s) to be ratified.		81.19
AUTHORIZING OFFICIAL reviews <u>final</u> request and advises the Recognized Governing Body or Spokesperson of any provision that may be contrary to Federal statute; directs the Local Bureau Official to call the election; and appoints the Local Bureau Official Chairperson of the Secretarial Election Board.	90 days of receipt (Alaska 120 days)	81.19
LOCAL BUREAU OFFICIAL gives notice of any provision contrary to Federal statute and the final request or petition is complete.	At least 30 days prior to election	81.15
RECOGNIZED GOVERNING BODY or SECRETARIAL ELECTION BOARD appoints at least two members to the Secretarial Election Board and provides a current eligible voters list.		81.20 81.21
SECRETARIAL ELECTION BOARD sets date, time, site and appropriate deadlines for election; prepare and send Secretarial Election Notice and Registration Packets; post the Registered Voters List; determine challenges; submit all required documents to the Local Bureau Official.		81.22
SECRETARIAL ELECTION BOARD CHAIRPERSON appoints interpreters and polling place workers.		81.23
DISTRICT SECRETARIAL ELECTION BOARD is established by the Indian tribe's governing documents or the Secretarial Election Board.		81.24
SECRETARIAL ELECTION BOARD determines the percentage of registered voters casting ballots and certifies the results of the Secretarial election.		81.56 81.58
LOCAL BUREAU OFFICIAL must receive all challenges to the Secretarial election.	Within 3 days	81.60
AUTHORIZING OFFICIAL must determine the validity of challenge and whether a recount or a new election is warranted; approves or disapproves the proposed document and election results; certify the results of the election; notifies the governing body of the Indian tribe and/or spokesperson for the petitioners; and	Within 45 days	81.61 81.62

	Timeline	Section
retains all election documents as required by the Schedule of Records.		